

Order

Michigan Supreme Court
Lansing, Michigan

November 24, 2010

Marilyn Kelly,
Chief Justice

141176

Michael F. Cavanagh
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway
Alton Thomas Davis,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 141176
COA: 296528
Clinton CC: 03-007324-FH

DONALD JOHNATHAN HART,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the May 13, 2010 order of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Clinton Circuit Court. On September 27, 2004, the parties filed a stipulation to amend the judgment of sentence, conditioned on whether *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), was applicable to Michigan's indeterminate sentencing scheme. The stipulation provides that the May 21, 2003 judgment of sentence shall be amended if *Blakely, supra*, does not apply in Michigan. In *People v Drohan*, 475 Mich 140 (2006), cert den sub nom *Drohan v Michigan*, 549 US 1037; 127 S Ct 592; 166 L Ed 2d 440 (2006), this Court determined that *Blakely* is not applicable to Michigan's indeterminate sentencing scheme. In accord, *Montes v Trombley*, 599 F3d 490, 498 (CA 6, 2010). On remand, the trial court shall review the judgment of sentence, determine if it has been amended in accordance with the stipulation and, if not, amend it accordingly. In all other respects, leave to appeal is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

DAVIS, J., not participating. I recuse myself and am not participating because I was on the Court of Appeals panel in this case. See MCR 2.003(B).



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 24, 2010

Corbin R. Davis

Clerk